Vong Ban Hin v Laksamana Realty Sdn Bhd

HIGH COURT (MELAKA) — CIVIL APPEAL NO 1–12–25 OF 2005
LOW HOP BING J
24 JANUARY 2006

Land Law — Licence — Gratuitous licence — Purchase of house, but not of land earlier between defendant and third party — No contractual relationship between the plaintiff and the defendant — Whether licence terminated by plaintiff's notice to quit

At all material time, the defendant had been occupying the premises on the land of which the plaintiff is the registered owner. The plaintiff had on 20 July 1994 served on the defendant a notice to quit and to deliver vacant possession thereof on or before 31 August 1994, but the defendant had failed to do so, as a result of which the plaintiff in the action before the trial court prayed for vacant possession, mesne profit under s 28(4)(a) of the Civil Law Act 1956 with effect from 1 September 1994 to the date of vacant possession, damages for trespass and costs. The defendant alleged that he was at all material time and still is the owner of the premises on the ground that one Tan Guan Soon (SD3) had sold to him the premises together with the land. The evidence of the registrar of titles Melaka revealed that the plaintiff is the registered proprietor of the land with effect from 6 January 1987. There was also a sealed consent order of the Magistrate's Court Melaka Summons No 570-80 wherein SD3 and SD4 herein were the plaintiff and the defendant therein respectively stated that the defendant is to pay the plaintiff the sum of RM60,000 for the purchase of the said house. SD3 testified that he was the owner of the premises but confirmed that he had never owned the land. After that evidence, the defendant sought to amend the order of the magistrate's court by adding words to the effect that the sale of the premises was 'inclusive of the right to' the land on which it was situated. The sessions court judge found on a balance of probabilities that the defendant was a trespasser who had no right to the land.

Held, dismissing the appeal:

(1) The trial judge was correct in accepting SDS's cogent and honest evidence and in being sceptical of the bona fide of the defendant in relation to the amended order. SD3 as the owner of the premises could not have conferred on or transferred to the defendant any right to the land when SD3 had none — *Nemo dat quod non habet* — No one gives who possesses not. Hence, SD3 could only sell the premises to the defendant but not the right to the land, as SD3 had in the first place no right or title to the land at all (see para 19).

(2) At best, the interest of the defendant was in relation to the premises which he had bought from SD3. However, there was no contractual relationship between the plaintiff and the defendant. That being the case, the defendant's

legal position on the land was that of a gratuitous licensee whose licence had been terminated or revoked at will by the plaintiff's notice to quit dated 20 July 1994, thereby consigning him to the status of a trespasser (see para 21).

[Bahasa Malaysia summary

Pada sepanjang masa yang material, defendan menduduki premis di atas sebuah tanah di mana plaintif adalah tuan punya berdaftar. Plaintif telah pada 20 Julai 1994 menyampaikan ke atas defendan notis keluar dan menyerahkan milikan kosong sebelum atau pada 31 Ogos 1994, tetapi defendan gagal berbuat demikian, dan dengan itu plaintif telah dalam satu tindakan di mahkamah memohon untuk milikan kosong, hasil perantaraan (*mesne* profit) di bawah 28(4)(a) Akta Undang-Undang Sivil 1956 berkuat kuasa dari 1 September 1994 sehingga tarikh milikan kosong, ganti rugi untuk pencerobohan dan kos. Defendan menyatakan bahawa beliau masih dan juga pada sepanjang masa yang material merupakan pemilik premis tersebut atas alasan bahawa seorang bernama Tan Guan Soon (SD3) telah menjualkannya premis tersebut dengan tanahnya. Bukti daripada pendaftar hak milik Melaka mendedahkan plaintif sebagai tuan punya berdaftar tanah tersebut bermula dari 6 Januari 1987. Terdapat juga satu perintah persetujuan bermetarai dari Mahkamah Majistret Melaka Saman No 570-80 di mana SD3 dan SD4 di sini adalah masing-masing defendan dan plaintif di sana dan di mana ia dinyatakan bahawa defendan dikehendaki membayar plaintif sejumlah RM60,000 sebagai harga belian rumah tersebut. SD3 telah memberikan keterangan bahawa beliau merupakan pemilik premis tersebut tetapi mengesahkan bahawa beliau tidak pernah memiliki tanah tersebut. Setelah keterangan ini, defendan telah membuat pindaan kepada perintah mahkamah majistret dengan menambahkan perkataan yang menyatakan bahawa penjualan premis tersebut adalah 'termasuk hak' ke atas tanah di mana ia diletak. Hakim mahkamah sesyen mendapati atas imbangan kebarangkalian bahawa defendan adalah penceroboh yang tidak mempunyai hak ke atas tanah.

Diputuskan, menolak rayuan tersebut:

(1) Hakim perbicaraan betul dalam menerima keterangan SD3 yang meyakinkan dan jujur dan berwaspada dengan bona fide defendan berhubung dengan pindaan perintah tersebut. SD3 sebagai pemilik premis tidak dapat memberikan atau memindahkan kepada defendan sebarang hak ke atas tanah apabila SD3 tidak mempunyai hak berbuat demikian — *Nemo dat quod non habet* —Tidak dapat diberi apa yang tidak dimiliki. Dengan itu SD3 hanya dapat menjual premis kepada defendan tetapi bukan hak ke atas tanah, oleh kerana SD3 pada hakikatnya tidak langsung mempunyai hak atau hak milik ke atas tanah tersebut (lihat perenggan 19).

(2) Kepentingan defendan hanya berkaitan premis yang dibelinya daripada SD3. Akan tetapi, tiada perhubungan kontraktual di antara plaintif dan defendan. Dengan itu, kedudukan undang-undang defendan ke atas tanah tersebut hanya setakat pemegang lesen ganjaran di mana lesen tersebut telah ditamatkan atau ditarik balik oleh notis keluar plaintif bertarikh 20 Julai 1994, dengan itu menukarkannya ke status penceroboh (lihat perenggan 21).]

Notes

For cases on gratuitous licence, see 8(2) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 2861–2862.

Cases referred to

Hotel Ambassador (M) Sdn Bhd v Seapower (M) Sdn Bhd [1991] 1 MLJ 221 (refd)
Immetec Sdn Bhd v Yong Tai Hoong & Anor [1995] 1 MLJ 390 (refd)
Lian Keow Sdn Bhd (in liquidation) & Anor v Overseas Credit Finance (M) Bhd & Ors [1988] 2 MLJ 449 (refd)
Pendakwa Raya v Tan Sri Muhammad bin Muhammad Taib [1999] 2 MLJ 305 (distd)
Petronas Dagangan Sdn Bhd v Omar bin Abdul Samad [1996] 4 MLJ 391 (refd)

Legislation referred to

Civil Law Act 1956 s 28(4)(a)
National Land Code 1965 s 340(4)
Prevention of Corruption Act 1961 s 25(2)

Appeal from: Summons No 52–250 of 1994 (Sessions' Court, Melaka)

Shaari Nor (Shaari Nor & Co) for the defendant.
J Amardas (KP Ng & Amardas) for the plaintiff.

Low Hop Bing J:

APPEAL

[1] This is an appeal by the appellant-defendant ('the defendant') against the decision of the learned sessions court judge ('the trial judge') who had on 28 February 2005 allowed the plaintiffs claim for vacant possession of Lot 70, KB XXXVI in the district of Melaka Tengah ('the land') on which premises No 86M Jalan Semabok ('the premises') stood, with damages to be assessed and costs to be paid by the defendant.

FINDING OF FACTS

[2] After a full trial, the finding of facts by the trial judge may be narrated below.

[3] At all material time, the defendant had been occupying the premises on the land of which the plaintiff is the registered owner. The plaintiff had on 20 July 1994 served on the defendant a notice to quit and to deliver vacant possession thereof on or before 31 August 1994, but the defendant had failed to do so, as a result of which the plaintiff in the action before the trial court prayed for vacant possession, *mesne* profit under s 28(4)(a) of the Civil Law Act 1956 with effect from 1 September 1994 to the date of vacant possession, damages for trespass and costs.

[4] The defendant alleged that he was at all material time and still is the owner of the premises on the ground that one Tan Guan Soon (SD3) has sold to him the premises together with the land.

[5] The evidence of the registrar of titles Melaka (SP1) revealed that the plaintiff is the registered proprietor of the land, as all the previous registered owners viz. Tan Tian Hock had on 20 October 1982 and Tan Tian Cheng and others had on 27 September 1983 transferred all their shares in the land to the plaintiff absolutely. The original title exh PI clearly stated so.

[6] The defendant's case was based on his own evidence as SD4, and that of SD3.

[7] SD3 testified that he was the owner of the premises but confirmed that he had never owned the land. This was clearly stated in the sealed consent order of the Magistrate's Court Melaka Summons No 570-80 (exh PI2) in these words:

> … the parties hereby recognised the plaintiff as the owner of the house No 86M, Jalan Semabok, Malacca only without the land on which it is situated.
>
> … the defendant do pay to the plaintiff the sum of RM60,000 for the purchase of the said house (without the land)
>
> (Words in bracket added.)

[8] SD3 and SD4 herein were the plaintiff and the defendant therein respectively.

[9] Subsequently to SD3's cogent evidence, including exh P12, the defendant had obtained an amended order dated 16 June 2004 in exh D47, purporting to amend exh P12 by adding words to the effect that the sale of the premises was 'inclusive of the right to' the land on which it was situated.

DEFENDANT'S STATUS VIS-A-VIS THE LAND

[10] Defendant's learned counsel Mr Shaari Nor submitted that the defendnt was the owner of the premises inclusive of the right to the land on the basis of the amended order of the magistrate's court, and so was neither a trespasser, tenant nor a licensee, citing *Lian Keow Sdn Bhd (in liquidation) & Anor v Overseas Credit Finance (M) Bhd & Ors* [1988] 2 MLJ 449; *Pendakwa Raya v Tan Sri Muhammad bin Muhammad Taib* [1999] 2 MLJ 305 (HC); and s 340(4) of the National Land Code 1965.

[11] A reference hereinafter to a section is a reference to that section in the National Land Code 1965 unless otherwise stated.

[12] For the plaintiff, learned counsel Mr J Amardas asserted that the plaintiff has indefeasible title under s 340(1), in which case the defendant has no contractual right to remain on the land, being a mere gratuitous licensee, on the authority of *Immetec Sdn Bhd v Yong Tai Hoong & Anor* [1995] 1 MLJ 390 (HC).

[13] He added that the plaintiff has vide notice to quit withdrawn the licence on 20 July 1994, after which the defendant was a trespasser, on the basis of *Hotel Ambassador (M) Sdn Bhd v Seapower (M) Sdn Bhd* [1991] 1 MLJ 221 (HC).

[14] On this issue, the trial judge was sceptical of the defendant's motive in the purported amendment especially after SD3's aforesaid cogent evidence to the contrary, and found on a balance of probabilities that the defendant was a trespasser who had no right to the land.

[15] In this regard, the question for determination in this appeal is whether the decision of the trial judge is correct in law and in fact.

[16] It is to be noted that vide the original title exh P1, the plaintiff has, with effect from 6 January 1987, been the registered proprietor of the land and the plaintiffs title is indefeasable under s 340(1).

[17] The factual matrix in *Lian Keow Sdn Bhd* relied on by the defendant, revolved essentially around numerous transactions of sale of shares, creation of charges as securities for repayment of loan and company winding up, amongst others. The appellants sought declarations that the series of charges and sales of the estate were void, and an order that the proceeds of sale of the estate be paid by the first and second respondents to the second appellants. The Supreme Court considered, inter alia, s 340(2). The judgment of Syed Agil SCJ (as he then was) confirms the trite principle under the Torrens system codified by the National Land Code 1965 dealing with registration of land and providing, inter alia, indefeasibility of title to a registered owner of land against any rival claimants except in cases of fraud, misrepresentation or the like under s 340(2). I am unable to see how this judicial pronouncement of the Supreme Court can render any assistance to the defendant's position herein especially on the facts before the trial court.

[18] Next, *Tan Sri Muhammad Taib* concerns the charge of wilfully neglecting or failing to comply with the terms of a written notice dated 10 April 1997 issued under s 25(1) of the Prevention of Corruption Act 1961, and punishable under s 25(2) thereof. Investigations showed that the defendant had not declared properties. The defence case has established that all these properties had already been sold to various persons, thereby providing the answer to the charge of non-declaration. Specifically, on this defence, Abdul Wahab Patail J reaffirmed that in the language of the National Land Code 1965, the registered proprietor has an indefeasible title against the whole world, and the register is everything. It is to be noted that the sale of the properties there were absolute sale with the land, unlike the appeal before me which is concerned with the sale of premises without the land. Hence, the facts are distinguishable.

[19] The defendant's ground in this appeal is based on the amended order of the magistrate's court purporting to give the defendant the right to the land, which is in direct conflict with the evidence of SD3 who was at the material time the owner of the premises and who has categorically testified that he had never owned the land at all, and that he had sold the defendant the premises without the land. After that

evidence, the defendant sought the amendment. In my view, the trial judge is correct in accepting SDS's cogent and honest evidence and in being sceptical of the bona fide of the defendant in relation to the amended order. In my judgment, SD3 as the owner of the premises could not have conferred on or transferred to the defendant any right to the land when SD3 has none — *Nemo dat quod non habet* — No one gives who possesses not. Hence, SD3 could only sell the premises to the defendant but not the right to the land, as SD3 had in the first place no right or title to the land at all.

[20] Section 340(4)(b) cited for the defendant reads as follows:

> 340(4)
> Nothing in this section shall prejudice or prevent —
> (a) …; or
> (b) the determination of title or interest by operation of law.

[21] In this regard, at best the interest of the defendant is in relation to the premises which he had bought from SD3. However, there was no contractual relationship between the plaintiff and the defendant. That being the case, the defendant's legal position on the land is that of a gratuitous licensee whose licence has been terminated or revoked at will by the plaintiffs notice to quit dated 20 July 1994, thereby consigning him to the status of a trespasser: (see my judgment in *Immetec* at pp 395E–396E).

[22] The relevant facts in *Hotel Ambassador* relied on by the defendant, reveal that the defendants had purchased immovable properly at a public auction, the sale being subject to tenancies and the defendant's right to be let into possession or receipt of the rental and profits of the property. In 1966, the plaintiffs had occupied the property pursuant to a registered 10-year lease granted by the previous owners, with the option of further extension. Although the plaintiff had not exercised the option, it continued in occupation of the property. The plaintiff commenced a writ of summons against the defendant, seeking a declaration, inter alia, that the plaintiff was the lawful tenant, and obtained an ex parte injunction restraining the defendant from interferring with the plaintiffs occupation and use of the property. The defendant vide inter partes summons in chambers applied for, inter alia, possession of the property and damages. Edgar Joseph Jr J (later FCJ) allowed the defendant's application holding, inter alia, that the plaintiff was in unlawful possession of the property, being trespassers or at most bare licensees and such licence has been duly terminated by ample notice before action, or service of the summons in chambers was itself a notice of termination of the licence. This authority actually militates against the defendant's contention.

[23] In the circumstnces, I hold that the trial judge has not erred in her finding as adumbrated above.

VACANT POSSESSION

[24] It was contended that the defendant has beneficial contractual rights in the premises and the land by operation of law which the plaintiff has not refuted and so

A it is deemed to be admitted. Defendant relied on an agreement IDD18 executed between Tang Eng Chai as joint owner and Tan Huan as developer on 5 May 1964 ('the 1964 agreement').

[25] In response, the plaintiff also relied on *Hotel Ambassador* and *Petronas Dagangan Sdn Bhd v Omar bin Abdul Samad* [1996] 4 MLJ 391 (HC).
B

[26] The trial judge held that the defendant's right purportedly based on the 1964 agreement did not bind the plaintiff, as SD3 who sold the premises to the defendant was never the owner of the land, and that the premises was not part of the estate of the said Tan Huan; hence the plaintiff has no obligations under the 1964 agreement.
C

[27] In my judgment, the issue raised herein is closely connected with the status of the defendant as ventilated and answered above. The so-called beneficial or contractual rights of the defendant, if any, can only exist between the parties to the purported transactions in 1964 which cannot affect the plaintiff.
D

[28] The demerits of the defendant's case may be demonstrated by reference to *Petronas Dagangan* where the petrol dealership licensee had built a semi-permanent food stall on the land with the approval of the plaintiff, Petronas, which was the leaseholder of the land. Upon the plaintiff terminating the dealership agreement, Petronas demanded the demolition and delivery of vacant possession of the food stall
E by the defendant to the plaintiff. The defendant refused, on the ground that he had expended between RM25,000 and RM30,000 in constructing the food stall, which gve him the equitable right to remain on the land, Abdul Malik Ishak J held that the arrangement to construct the food stall on the plaintiffs land amounted in law to nothing more than a gratuitous licence which can be revoked at will by the licensor,
F so that the defendant had no legal right to remain on the plaintiffs land thereafter, and in failing to do so, he was nothing more than a trespasser.

[29] The above judgment is consistent with mine in *Immetec* which I have considered above.
G

[30] In the instant appeal, I am unable to find any flaw in the trial judge's finding of facts that the defendant had never been led by the plaintiff to expend money on the land nor was the defendant under an expectation created or encouraged by the plaintiff that the defendant would as a result thereof be able to remain on the
H plaintiffs land. This factual matrix certainly does not attract the application of the doctrine of equitable estoppel which was contended for the defendant.

[31] The trial judge has carefully considered all the evidence adduced before her and has applied correct principles of law in her well prepared judgment.

I DAMAGES

[32] In this appeal, no submission was presented for the defendant in relation to the trial judge's consequential order for damages to be assessed. Hence there was no reply by the plaintiff.

[33] Upon considering the appeal record, I am of the view that there is no error in the trial judge's consequential order.

CONCLUSION

[34] On the following grounds, I hold that this appeal is without merits. It is dismissed with costs. The entire decision of the trial court is hereby affirmed.

Appeal dismissed.

Reported by Sally Kee